IN THE HIGH COURT OF BOMBAY AT GOA.

COMPANY APPLICATION NO. 01 OF 2006.

Sesa Industries Ltd.
a Company incorporated
under the Companies Act,
1956 having its registered
office at Sesa Ghor, 20 EDC
Complex, Patto, Panjim,
Goa – 403 001. ..... Applicant

MISC. CIVIL APPLICATION NO. 27 OF 2006.

Mrs. Krishna H. Bajaj,
Mumbai ..... Intervenor

COMPANY APPLICATION NO. 02 OF 2006.

Sesa Goa Ltd.
a Company incorporated
under the Companies Act,
1956 having its registered
office at Sesa Ghor, 20 EDC
Complex, Patto, Panjim,
Goa – 403 001. ..... Applicant

Mr. J. J. Bhat, Senior Advocate with Mr. R. G. Ramani, Advocate for the Applicant.

Mr. Zal T. Adhyarujina with Shri V. A. Lawande and Shri A. Kakodkar, Advocate for the intervenor.

CORAM:- N. A. BRITTO, J.

DATE:- 18th March, 2006.

ORAL ORDER

Heard Shri J. J. Bhat, the learned Senior Advocate on behalf of Sesa Goa Limited, the transferee Company and Sesa Industries Limited, the transferor Company and Shri Zal T. Adhyarujina, on behalf of the intervenor.

2. The intervenor holds 0.29% of shares in Sesa Industries Ltd., and 88.25% of the shares of Sesa Industries Ltd., are held by Sesa Goa Ltd.

3. Both the above said Companies have filed applications under Section 391(1) of the Companies Act, 1956, (Act, for short), for an Order to call for a meeting of the shareholders of the said Companies to consider and if fit to approve a Scheme of Amalgamation of the said two Companies and, in the said application, the intervenor as a shareholder in the said Sesa Industries Ltd., has sought for his impleadment and to be heard. Although the intervenor has filed an application for intervention, and subsequently an affidavit, the intervenor has clearly not set out as to what reliefs, if any, he

is seeking from this Court at the time of hearing of the applications filed by the above said Companies. Along with affidavit filed by the intervenor, the intervenor has filed a letter dated 17.02.2006, issued by the Director of Inspection and Investigation, Ministry of Companies Affairs, Government of India, addressed to the Regional Director and which shows that on behalf of the Central Government, the said letter has been issued enclosing a copy of the Inspection Report and stating that during the course of investigation, the Inspecting Officer had pointed out certain contraventions of Sections 269 read with Section 198/309 and other Sections and suggesting the invoking of the provisions of Sections 397 and 398 read with Section 388B, 401, 402 and 406 of the Act, including that of Section 542 of the Act and further pointing out certain financial irregularities in the light of complaints of Mrs. Kalpana Bhandari and Mrs. Krishna Bajaj, which have been reported in Para '*A*' of the Inspection Report so also contravention of Section 297 of the Act, which has been reported in Para '*B*' of the Inspection Report, and it has also been suggested that Para '*D*' of the Inspection Report, be reported to the Ministry of Finance and SEBI and, accordingly, the said Regional Director has been asked to examine Para '*B*' of the Inspection Report and submit his report and that, as far as Para '*A*' and '*D*' are concerned, the same would be examined by the Ministry and necessary instructions would be

issued in due course.

4. Nevertheless, Shri Adhyarujina, the learned Counsel on behalf of the intervenor has made two submissions before this Court. Shri Adhyarujina submits that in view of the said letter, a notice could be given to the Central Government to submit its inspection report so that the same could be placed before the shareholders, before they consider or approve the said Scheme. It is also submitted by Shri Adhyarujina, that contents of the said letter be placed at the said meeting amending the draft scheme, so as to incorporate the contents of the said letter, so that the shareholders can come to an informed decision. Shri Adhyarujina submits that the Company is duty bound to disclose all information and that would include the information that the Companies are under investigation so that the shareholders take an informed decision.

5. On the other hand, Shri Bhat, the learned Sr. Counsel, relying upon the case of ***Rainbow Denim Ltd. v. Rama Petrochemicals Ltd ((2002) 10 S.C.C. 498)***, has submitted that the prayers made on behalf of the intervenor are premature, for the Petitioner could be heard before the said Scheme is approved by the Court.

6. No doubt, the Hon'ble Supreme Court, in the aforesaid decision ***Rainbow Denim Ltd.*** (supra), has stated that the appropriate time for the Company Judge to consider the Scheme is subsequent to approval thereof by the shareholders and creditors. The Supreme Court has further observed that the Scheme could be considered wherein application is made before the Company Judge. In other words, the scheme is to be considered not at the stage when the applicants move the Company Court for the purpose of an Order calling for the meeting of the shareholders at the stage of Section 391(1) of the Act, but subsequently, after the said meeting is held at the stage of Section 394.

7. However, here is a case where one of the shareholder of one of the Companies, is before the Court, asking the Court that the shareholders have a right to be informed that the Companies are under investigation by the Central Government so as to enable them to take an informed decision. In my view, the said prayer of the intervenor cannot be stated to be unreasonable. It is the financial interest of the shareholders which would be at stake in the event, the investigations being carried out by the Central Government, lead to the winding up of the said Companies at the instance

of the Central Government.

8. Section 391(1) provides that the Court may on the application of the Company or of any creditor or member of the company or, in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be to be called, held and conducted in such manner as the Court directs. In other words, the aforesaid provision gives sufficient discretion to this Court in what manner the meeting of the shareholders is to be called, held or conducted. Rule 67 of the Companies (Court) Rules, 1959, deals with summons for direction to convene a meeting in case of an application under Section 391(1) of the Act and Rule 69, inter alia, provides that upon the hearing of the summons, the Judge shall, unless he thinks fit for any reason to dismiss the summons, give such directions as he may think necessary in respect of matters enlisted therein including such other matter as the Court may deem necessary. Here again, a discretion is given to the Court in what manner the meeting of shareholders or creditors is to be conducted. Rule 69 further provides that the Order made on the summons, shall be in Form no. 35 with such variations as may be necessary.

9. In the case of ***Travancore National and Quilon Bank, Ltd. v. L. Raghuraja Bharathi & Ors (AIR 1939 Madras 318)***, a reference was made to the observations of ***Lindley L. J. (1893 3 Ch 385)***, wherein he had observed that "*if the creditors are acting on sufficient information and with time to consider what they are about and are acting honestly, they are, I apprehend, much better Judges of what is to their commercial advantage than the Court can do*". The Court then observed that any scheme which is approved, must prima facie, appear to be based on correct information and data. In the case of ***Sakamari Steel v. Alloys Ltd. (1981 Vol. 51 Company Cases 266)***, it was observed that reference to Rule 67 of the said Rules, that in terms of Section 391(1) of the Act and Rule 67 of the Rules that directions had to be given unless the Judge thinks fit for any reason to dismiss the summons for directions and thus on the basis of the Act and the Rules made thereunder, it is not compulsory for the Court to give directions to convene a meeting contemplated under Section 391(1) of the Act and the Court has to consider the circumstances before giving its approval, though the fact that three-fourths in value of the creditors have agreed to accept the scheme would be a strong circumstance in favour of sanctioning the scheme by the Court.

10. Minutes of Order on summons for direction have been filed on behalf of applicants. The prayer of the petitioner for calling for the report from the Central Government so that the same can be placed before the shareholders at the meeting, need not be considered by this Court at this stage. Nevertheless, the prayer of the intervenor that the shareholders should know, before they approve the Scheme, that the Companies are under investigation so as to allow them to take an informed decision, cannot be simply brushed aside. The shareholders are the first judges, if I may use that expression, to consider whether the Scheme to be placed before them is to be approved or not, and for this purpose, they would be certainly entitled to know whether the Companies of which they are shareholders are being investigated by the Central Government, and, as a result of that, what decision they are required to take. In my view, it would be in the interest of justice if the following statement is made part of the explanatory statement to be sent with individual notices to the shareholders under Section 393 of the Act, for calling of the meeting of the said shareholders. The said statement will read as follows:-

> "The Central Government has issued a letter dated 17th February, 2006 to various governmental agencies including the Regional Director (Western

Region) enclosing a copy of the inspection report and recording that during the course of the inspection, the inspecting officer has pointed out contraventions of Section 269 read with Section 198/309, contravention of Section 289 read with Article no. 111 and 140 of the Articles, contravention of Section 260 and 313, contravention of Section 268 read with Section 256 and contravention of Section 628 of the Act. The Investigating Officer has suggested invoking the provisions of Section 397 and 398 read with Section 388B, 401, 402 and 406 of the Act including that of Section 542 of the Act. The Inspection report has also pointed out financial irregularities and also examined the complaints of Mrs. Kalpana Bhandari and Mrs. Krishna H. Bajaj which have been reported in Part "A" of the Inspection Report. Contravention of Section 297 of the Act has been reported in Part "B" of the Inspection Report. It has also been suggested Part "D" of the Inspection Report for references to be made to the Ministry of Finance and SEBI. Accordingly, the Central Government has requested the addressees to examine the report and take appropriate action."

11. The minutes of Order on summons for direction filed by the petitioners are accepted, subject to what has been stated hereinabove. The applications along with the intervention application shall stand disposed of accordingly, with no order as to costs, in above terms.

Expedite Certified copy.

N. A. BRITTO, J.

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